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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CLARENCE JUNIOR TIMMONS,

Defendant and Appellant.

B263498

(Los Angeles County
Super. Ct. No. BA096232)

APPEAL from an order of the Superior Court of Los Angeles County. Karla D. Kerlin, Judge. Affirmed.

Clarence Junior Timmons, in pro. per.; Tyrone A. Sandoval, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

In the underlying action, the trial court denied appellant’s petition for resentencing under Penal Code section 1170.18, a provision enacted pursuant to Proposition 47 that permits defendants convicted of certain felonies to be resentenced as if convicted of a misdemeanor.¹ After an appeal was noticed from that ruling, appellant’s court-appointed counsel filed an opening brief raising no issues. Appellant has submitted supplemental briefs. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude that no arguable issues exist, and affirm the denial of the petition for resentencing.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The limited record before us discloses the following facts: In January 1995, appellant was convicted of robbery (§ 211). In November 2014, the electorate approved Proposition 47, which makes certain theft-related and drug-related offenses misdemeanors. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Proposition 47 also added section 1170.18, which creates a post-conviction resentencing procedure for persons convicted of felony offenses now classified as misdemeanors. (*Rivera, supra*, at pp. 1092-1093.) Under subdivision (a) of section 1170.18, a person “currently serving” a felony sentence for a reclassified offense who satisfies certain eligibility criteria may seek resentencing. (*Rivera, supra*, at p. 1092.) In addition, under subdivision (f) of section 1170.18, persons who have completed felony sentences for reclassified offenses may request redesignation of the offense as a misdemeanor ““for all purposes”” (absent exceptions not pertinent here). (*Rivera, supra*, at p. 1093.)

¹ All further statutory references are to the Penal Code.

On February 11, 2015, appellant submitted a form document identified as an “Application/Petition for Resentencing and People’s Response” pursuant to section 1170.18, subdivisions (a) and (f). The document, as completed by appellant, stated: “On 1-19-95, I was convicted in the above-captioned case of a felony violation of a crime that has now been made a misdemeanor pursuant to Proposition 47.” The portion of the form document entitled “District Attorney’s Response” discloses that the district attorney opposed the petition on the ground that robbery is not a felony subject to resentencing under section 1170.18. On February 27, 2015, the trial court denied appellant’s petition for resentencing. This appeal followed.²

DISCUSSION

After an examination of the record, appellant’s court-appointed counsel filed an opening brief raising no issues, and requested this court to review the record independently pursuant to *Wende*. In addition, counsel advised appellant of his right to submit by supplemental brief any contentions or argument he wished the court to consider. In response, appellant submitted supplemental briefs and several documents relating to his January 1995 conviction.

Our independent review of the record discloses no error in the trial court’s

² The record on appeal lacks appellant’s February 11, 2015 petition for resentencing, and contains only a petition for resentencing he executed on March 24, 2015, and submitted in connection with his notice of appeal. We have therefore augmented the record with the copy of the February 11, 2015 petition that appellant submitted with his supplemental briefs. (Cal. Rules of Court, rule 8.340(c).) Although that copy contains annotations -- apparently by appellant -- referencing additional prior convictions, the petition identifies appellant’s January 1995 conviction as the “crime that has now been made a misdemeanor pursuant to Proposition 47.” It is clear from the response that the district attorney viewed the petition as targeting that conviction.

determination that appellant is ineligible for resentencing under section 1170.18. Appellant's February 2015 motion for resentencing identified only his January 1995 conviction for robbery under section 211 as the offense reclassified as a misdemeanor under Proposition 47. As the district attorney correctly noted, robbery is not one of the felony offenses subject to resentencing. (See § 1170.18, subd. (a).)

Appellant contends the trial court misunderstood his petition for resentencing, and thus erred in denying it. He maintains that a sentence pursuant to the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) was imposed on his January 1995 robbery conviction because he had multiple felony prior convictions for burglary and receiving stolen property. He further argues that some or all of his felony convictions predating the January 1995 robbery conviction are eligible for resentencing as misdemeanors under Proposition 47. However, as appellant's February 11, 2015 petition specifically identified his January 1995 robbery conviction as the crime for which he sought resentencing, the trial court did not err in granting no relief regarding other prior convictions. In sum, because the record demonstrates that appellant's petition for resentencing was properly denied, we conclude that no arguable issues exist. (*People v. Wende*, *supra*, 25 Cal.3d at p. 441.)³

³ Nothing in our decision precludes appellant from seeking resentencing regarding his convictions predating the January 1995 robbery conviction, upon proper application to the superior court.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.